

DoD Labor Relations Guidance
New Travel Card Requirements
June 14, 2001

BACKGROUND:

On June 14, 2001, the Under Secretary of Defense (Comptroller) issued a policy memorandum outlining changes to the Department of Defense (DoD) Travel Charge Card Policies. These changes reflect agreements made with the travel card contractor in a task order modification. These policy changes are intended to reduce the risk to the travel card contractor and encourage travelers to pay their bills in a more timely manner. The new requirements include, but are not limited to, the following:

- DoD will reduce the number of cards for infrequent travelers. Individuals determined not to need a travel card will have their accounts closed and others who do not travel frequently will have their cards deactivated. If an individual whose card is deactivated subsequently enters a travel status, his or her card will be activated for the period of travel.
- DoD will implement default split disbursement of the individual's travel reimbursement not later than July 10, 2001. The paying organization splits off that portion of the travel settlement related to transportation, lodging and rental car and forwards that amount to the travel card contractor. The remainder of the entitlement is sent to the traveler. Travelers will have to make a conscious effort to decline the default split disbursement by annotating a declination statement on the travel voucher.
- DoD will establish procedures to implement salary offset for delinquent amounts due to the contractor not later than October 9, 2001.
- The travel card contractor may reduce both the cash and credit limits by 50% (expected to begin around August 1, 2001).
- The travel card contractor may increase the fee for cash fees (reimbursable) at ATMs (expected to begin around August 1, 2001).
- The travel card contractor may assess a \$20 fee (reimbursable) for the expeditious delivery of cards (expected to begin around August 1, 2001).
- The travel card contractor may increase the monthly late fee charged to the cardholder to \$29 from \$20 (expected to begin around August 1, 2001).
- The travel card contractor may assess a \$29 return check fee to the cardholder (expected to begin around August 1, 2001).
- DoD will address travel card issues with employees during in-processing and out-processing.
- DoD will implement a process to notify cardholders when Commanders have been notified of delinquencies.
- The revised task order allows individual activities to negotiate the use of debit cards (vice travel charge card) with the contractor.

**DoD Labor Relations Guidance
New Travel Card Requirements
DRAFT, 05/30/01**

QUESTIONS AND ANSWERS:

1) Are these changes subject to bargaining with our union?

Yes, local bargaining obligations must be met. The Federal Labor Relations Authority (FLRA) has ruled that an agency may not make changes to a condition of employment without fulfilling its bargaining obligations. See 41 FLRA 850, 853. These changes to the travel card program do impact the working conditions of bargaining unit employees required to use the government travel card.

2) We have no control over these changes being implemented by DoD. If our union submits a proposal that conflicts with these changes, do we have an obligation to bargain over matters that we can't control?

Yes, you still have an obligation to bargain over these changes if timely requested by your local union. The FLRA has previously ruled that a component of an agency is obligated to bargain with the exclusive representative of its employees over conditions of employment even though control over a particular condition of employment resides in another component of the same agency. The only exceptions to that obligation occur when the discretion is limited by law, Government-wide regulation, or agency regulations supported by a compelling need. See 29 FLRA 734, 771-772. In this particular case, the agency is considered the Department of Defense. While the Defense Finance and Accounting Service (DFAS) is tasked with implementing the policy on behalf of DoD, you still have an obligation to bargain over these changes because you are part of DoD along with DFAS.

3) What if we are unable to complete negotiations with our union by the dates the various changes to travel card policy are to be implemented?

The FLRA has ruled that the duty to bargain under the Statute requires that, absent a clear and unmistakable waiver of bargaining rights, parties must satisfy their mutual obligation to bargain before implementing changes in conditions of employment of unit employees. Therefore, if you are unable to conclude any bargaining on these matters by the effective dates of the policy changes, these changes should not be implemented until bargaining has been completed. In other words, with specific exceptions, you are required to maintain the status quo during the bargaining process. See 37 FLRA 392, 395 - 396.

DoD Labor Relations Guidance
New Travel Card Requirements
DRAFT, 05/30/01

4) Is our union's right to bargain limited to procedural bargaining or may they bargain over any substantive aspect of these changes?

It depends. If you are unsure about the negotiability of a particular union proposal, then you should obtain a negotiability determination from Field Advisory Services,

Labor Relations Team. However, on a more general note, the FLRA has found that where an agency has discretion over a condition of employment, the exercise of that discretion is subject to collective bargaining unless that discretion is intended to be sole and exclusive. See 50 FLRA 677.

For example, Section 2(d)(1) of the Travel and Transportation Reform Act of 1998, Public Law 105-264, provides agencies discretion concerning the collection of overdue travel card debt. Specifically, this law provides that we "may, on behalf of the contractor, collect by deduction from the amount of pay owed to an employee of the agency any amount of funds the employee owes to the contractor as a result of delinquencies not disputed by the employee on a travel charge card issued for payment of expenses incurred in connection with official Government travel." There is nothing in the legislative history of this law to suggest that this discretion is sole and exclusive, so the exercise of this particular discretion is subject to collective bargaining substantively as well as procedurally. However, if this discretion is exercised, there are two matters that limit discretion on how this is carried out. First, the amount deducted from the employee's pay may not exceed 15% of the employee's disposable pay for that pay period unless the employee authorizes a greater percentage. Second, as this relates to due process protections, the law states that collection of this debt shall be carried out in accordance with procedures substantially equivalent to the procedures required under section 3716(a) of title 31, United States Code. Specifically, 41 CFR 301-54.100 requires that an agency must:

- 1) provide an employee with written notice of the type and amount of the claim, the intention to collect the claim by deduction from the employee's disposable pay, and an explanation of the employee's rights as a debtor;
- 2) give an employee the opportunity to inspect and copy records related to the claim;
- 3) allow an opportunity for a review within the agency of its decision to collect the amount; and
- 4) provide an employee with an opportunity to make a written agreement with the contractor to repay the delinquent amount of the claim.

While all of the changes being made are accomplished through agency discretion, the goal is to reach an agreement with your union that is consistent with the policy. With

DoD Labor Relations Guidance
New Travel Card Requirements
DRAFT, 05/30/01

this in mind, you have an obligation to negotiate in good faith over negotiable union proposals that conflict with the policy and to take those proposals to the Federal Service Impasses Panel if you are unable to demonstrate to the union the benefits of the DoD policy. If you have questions concerning the negotiability of any union proposal, contact the Field Advisory Services Labor Relations Team.

5) I understand why our union may desire to negotiate over split disbursement or salary offset. However, I can't see what interest any union would have in negotiating over the other changes. For example, how does reducing the number of cards for infrequent travelers impact bargaining unit employees? How does giving the components discretion to use debit cards in lieu of travel charge cards impact bargaining unit employees, especially if the component does not exercise that discretion?

While split disbursement and salary offset are the changes most likely to warrant union interest, we cannot assume that unions will limit their request to bargain over these two issues. All changes concern conditions of employment and are subject to bargaining even if we cannot anticipate what the union may propose.

For example, DoD will reduce the number of cards for infrequent travelers primarily by deactivating cards of certain employees. If the employee enters into a travel status, their card will be activated for the period of travel. On the surface, this may seem like something that would not impact employees, but it does.

- For those bargaining unit employees who have their cards deactivated, what will be the process for activating their card for subsequent travel? Will they have to complete a form or simply notify the appropriate travel official?
- How many days in advance must they notify someone about their future travel to allow their card to be activated?
- Will the employee's card be activated early enough to allow the employee to obtain ATM cash advances prior to the travel?
- What is the employee's obligation when the travel is completed? Is the card automatically deactivated or does the employee have to notify someone?

Another example is the discretion of individual activities to use a debit card in lieu of a travel charge card.

- If you elect to use a debit card, your union may elect to negotiate over the actual decision to use a debit card.

DoD Labor Relations Guidance
New Travel Card Requirements
DRAFT, 05/30/01

- If you elect not to use the debit card, there would be no change in working conditions creating a bargaining obligation on the use of debit cards. However, the union could initiate midterm bargaining on the use of debit cards for travel purposes to the extent this matter is not already covered by your current collective bargaining agreement (although this is unlikely as the advantages offered by the debit card benefit the agency more than the employees).

These two examples highlight the possibility that there are issues the union could raise with any of the changes in travel card policy, not just split disbursement and salary offset. In any case, many union concerns might be addressed simply by educating the union on the changes being made. Once the union is fully informed of the changes and how these changes might impact their bargaining unit, this may reduce or limit how much bargaining you actually do. For example, once your union is informed that some of the fee increases concern reimbursable fees, your union might determine that they have no interest in bargaining on those particular changes.